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IN THE

Supreme Court of the United States

October Term, 1956.

No. ~~598~~.

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPELLEE'S BRIEF.

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IN THE

Supreme Court of the United States

October Term, 1956.

No. 590.

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPELLEE'S BRIEF.

I.

Statement of the Case.

Appellant was charged in the Municipal Court of the Los Angeles Judicial District in a verified complaint with having violated the provisions of subdivision (a) of Section 52.39 of the Los Angeles Municipal Code [R. 8]. The proceedings had in the trial court are set forth in the record by the Docket Entries and the Engrossed Statement on Appeal, duly settled and certified by the trial judge [R. 1-8; 15-21]. This was the record before the Appellate Department of the Superior Court of Los Angeles County and upon which its decision was based.

Appellant sought an appeal to this Court under the provisions of 28 U. S. C. 1257 (2).

As noted in the Engrossed Statement on Appeal and the Docket Entries, on April 15, 1955, the Second Amended Complaint was filed [R. 8-9] and appellant was duly ar-

raigned thereon and entered a plea of not guilty to the offense therein charged [R. 3; 17]. The trial proceeded and, as witnesses for the prosecution were called to testify, appellant stipulated to all the material facts needed to establish the violation charged [R. 4, 17]. Appellant testified in her own behalf as to certain facts and offered to testify to many others [R. 17-18]. After argument by counsel, the jury was orally instructed, and later returned a verdict of guilty [R. 4-5, 18]. Motions for a new trial and in arrest of judgment were made and denied by the trial court. The Court suspended imposition of sentence and placed appellant on summary probation [R. 5, 20]. An appeal was thereafter taken to the Appellate Department of the Superior Court of Los Angeles County wherein the order appealed from was affirmed [R. 29-30]. This Court noted probable jurisdiction on November 19, 1956 [R. 33].

Most of appellant's statement of the facts of this case set forth in her Opening Brief is not based upon the evidence presented to the jury but is taken from her offers of proof made during the trial and from offers of proof made in connection with her motion in arrest of judgment [R. 17-20].

The facts as presented to the jury and as found by the Appellate Department to be sufficient to support the conviction are: that certified copies of judgments were introduced showing that appellant had been twice convicted of felonies; that she had not registered with the police department; that she had resided and had remained in the City of Los Angeles for the period specified by the ordinance and the complaint, and that her convictions had not been set aside in a manner provided by law at the time of her arrests [R. 16-17, 29-30].

II.

Question Presented for Review.

Appellee believes that the only question properly before this Court for review is as follows:

Is the decision of the Appellate Department of the Superior Court of the County of Los Angeles correct in holding that an ordinance requiring persons previously convicted of crime to register with the Chief of Police to be a reasonable regulation enacted under the police power of the State and not repugnant to the Constitution of the United States?

III.

Summary of Argument.

This ordinance is a reasonable police regulation, directed at the evil of professionalism in crime, providing a convenient method of ascertaining the number and whereabouts of persons who have previously been convicted, generally of crime of the felony class. The police department of the city is entitled to know the presence of such persons in order to be able to more fully protect the inhabitants of the city by preventing the commission of crimes against them by persons known to have committed particular offenses in the past. It does not subject such registered persons to any additional punishment nor does it restrict their movements. All it requires is notice of their presence and whereabouts. It aids the police department in the enforcement of statutes which prohibit the possession of firearms by persons previously convicted of a felony, etc.; aids parole and probation officers in their task of supervising persons in their charge. This ordinance may also be said to provide a protection to those who have previously been convicted of major

crimes, in that the police may be able to determine whether any such person is being victimized by others by reason of his past experience. It serves as a deterrent to persons previously convicted to commit further crime for the reason that being registered can be considered a ready guide to such person should he again become involved in criminal activity. It does not offend any constitutional right of any person required to comply with its provisions. The ordinance is based upon a reasonable classification and was enacted to correct what the City Council found to be a needed measure in aid of its police power and its duty to protect and prevent evil and harm to the inhabitants of the City of Los Angeles, and is no more burdensome than requiring the registration of aliens, passengers, members of secret organizations, lobbyists, foreign agents, persons accepting wagers, bootblacks, taxi drivers, voters and persons employed in certain types of businesses and professions.

IV.

The Statute Here Involved Is Constitutional.

The sections of the Los Angeles Municipal Code which are pertinent to this matter are set forth in full under Appendix A, being numbered Sections 52.38, 52.39, 52.40, 52.41 and 52.42.

Under California law, all presumptions and intendments are in favor of the constitutionality of a statute, and all doubts should be resolved in favor of its validity. The constitutionality of the purpose and application of legislative enactments are generally presumed.

People v. Western Fruit Growers, 22 Cal. 2d 494;
In re Porterfield, 29 Cal. 2d 91.

In accordance with the general principle that all rights are subject to a proper exercise of the police power, it is well-settled that the possession and enjoyment by the individual of his right of liberty are subject to such reasonable regulations and restraints as may be imposed by the state in the exercise of the police power in order to preserve the health, safety, morals and welfare of the community. The prevailing view is that individual rights must yield to proper and reasonable regulation imposed for the best interests of the entire community. Individuals may be deprived of life or liberty as punishment for crime. Persons arrested may be measured and photographed by police authorities. Without in any way violating the constitutional guaranties, a citizen may be compelled, by force if need be, against his will and without regard to his personal wishes or even his religious or political convictions, to take his place in the ranks of the army of his country and risk his life in its defense.

11 Am. Jur. pp. 1140-1142.

It has been stated that the police power is one of the least limitable of governmental powers, and in its operation often cuts down property and personal rights.

Queenside Hills Realty Co. v. Saxl, 326 U. S. 80.

When the state sees fit to regulate upon a matter which is within its police power, its authority over the subject is plenary and can be reviewed by the courts only to the extent of determining whether the regulation is reasonable. The modern tendency to defer to the legislative judgment as to the existence of evils requiring regulation, and to disregard charges that special interests have procured the enactment of the measure, is emphasized in the case of *Daniel v. Family Security Life Ins. Co.*, 336 U. S. 220.

The wisdom and necessity for this prohibition is primarily a matter for the determination of the Council of the City of Los Angeles. That determination should not be interfered with unless from an examination of the record this Court can say that such determination is without rational basis.

South Carolina State Highway Dept. v. Barnwell, 303 U. S. 177, 192.

A. The Ordinance Is Based Upon a Reasonable Classification.

The rule is well settled that a state may classify persons and objects for the purpose of legislation and pass laws applicable only to persons and objects within a designated class for the purpose of applying its police power. The equal protection clause of the Fourteenth Amendment does not intend to take from the states the right and power to classify the subjects of legislation. It does not prohibit or prevent classification, provided such classification of persons and things is reasonable for the purpose of legislation, is based on proper and justifiable distinctions, considering the purpose of the law, is not clearly arbitrary, and is not a subterfuge to shield one class or unduly to burden another. Proper classification is distinctly contemplated by this amendment. A state need not, in order to meet the requirements of equal protection, provide for abstract symmetry in its legislation but it may mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience.

Skinner v. Oklahoma, 316 U. S. 535.

Persons convicted of crime, particularly of a felony, have been subjected to legislation directed to them as a class. Various sections of the California Constitution

and Codes, set forth in full in Appendix B herein, are examples: California Constitution, Article 20, Sections 10 and 11; California Constitution, Article 4, Section 21; Government Code, Sections 1021, 1028 and 1405; Elections Code, Sections 298 and 299; Civil Code, Section 92; Code of Civil Procedure, Sections 199 and 2051; Penal Code, Sections 98, 1072, and 12021.

In the *Matter of the Application of Gerino Ranceriz*, 193 Cal. 633, the California Supreme Court held a statute prohibiting unnaturalized foreign-born persons and persons who have been convicted of a felony against the person of another, to have a firearm in his possession, etc., to be a proper exercise of the police power and not invalid under the Fourteenth Amendment. It was there stated on page 630:

> "It cannot be assumed that the legislature did not have evidence before it, or that it did not have reasonable grounds to justify the legislation, as, for instance, that unnaturalized foreign-born persons and persons who have been convicted of a felony were more likely than citizens to unlawfully use firearms or engage in dangerous practices against the government in times of peace or war, or to resort to force in defiance of the law. To provide against such contingencies would plainly constitute a reasonable exercise of the police power."

The ruling of the above case was later reaffirmed by the California District Court of Appeal in the case of *People v. Cannizzaro*, 138 Cal. App. 28.

In *People v. James*, 71 Cal. App. 374, it was held that the terms of the Firearm's Act, Stats. 1923, p. 696, which excluded a person who had been convicted of a felony from the right to own or possess firearms, was not vio-

lative of Section 11 of Article 1 of the California Constitution, which requires all laws to have a uniform operation. The court in its decision quoted from the case of *Patsone v. Pennsylvania*, 232 U. S. 138, as follows:

> ". . . a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil is to be feared it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. . . . It is not enough to invalidate the law that others may do the same thing and go unpunished if as a matter of fact it is found that the danger is characteristic of the class named."

In the case of *People v. Dunlop*, 102 Cal. App. 2d 314, the court stated in connection with the "habitual criminal" statute, on page 316, that

> ". . . The prior convictions had given them a new status by reason whereof; upon conviction for a subsequent felony, the penalty for the latter was increased. . . . That prior convictions are not elements of a separate offense or of that alleged in the accusation is settled law. They merely aggravate the position of one accused of the primary offense in that he is by reason of his former imprisonment placed in the classification of those who may never be reformed. Such classifying does no violence to any privilege guaranteed by either the state or the federal Constitution.".

And on page 317, the court further stated:

> ". . . and it does not deny equal protection of the law vouchsafed by the Fourteenth Amendment. . . ."

In the case of *Skinner v. Oklahoma, supra* (316 U. S. 35), it was stated that under our constitutional system the States in determining the reach and scope of particular legislation need not provide abstract symmetry; that they may mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience; that this Court recently reaffirmed the view that the equal protection clause does not prevent the legislature from recognizing degrees of evil; that a state is not constrained in the exercise of its police power to ignore experience which marks a class of offenders or a family of offenses for special treatment; nor is it prevented by the equal protection clause from confining its restrictions to those classes of cases where the need is deemed to be clearest.

B. Registration Statutes Have Been Held To Be Proper Police Regulations.

This Court held a statute, requiring among other things that every master or commander of any ship arriving at the port of New York to make a report in writing within 24 hours of arrival to the recorder, giving the name, place of birth, last legal settlement, age and occupation of every person arriving as a passenger, whether coming from points within or without the United States, to be a valid police regulation, in the case of the *Mayor, Aldermen and Commonalty of the City of New York v. Miln*, 11 Peters 102, 9 L. Ed. 648. It was there stated that, from the scope of the law it was apparent that the object of the Legislature was to prevent New York from being burdened by an influx of persons brought thither in ships either from foreign countries or from any other of the States, and for that purpose a report was required

so that necessary steps might be taken by the city authorities to prevent them from becoming chargeable as paupers. This Court stated:

> "If we look at the persons for whose benefit it was passed, they are the people of New York, for whose protection and welfare the Legislature of that State are authorized and in duty bound to provide.
>
> "If we turn our attention to the purpose to be attained, it is to secure that very protection, and to provide for that very welfare. If we examine the means by which these ends are proposed to be accomplished, they bear a just, natural, and appropriate relation to those ends."

It was further stated:

> "We consider it unnecessary to pursue this comparison further, because we think that if the stronger powers under the necessity of the case, by inspection laws and quarantine laws to delay the landing of a ship and cargo, which are the subjects of commerce and navigation, and to remove or even to destroy unsound and infectious articles, also the subject of commerce, can be rightfully exercised; then that it must follow as a consequence that powers less strong, such as the one in question, which operates upon no subject either of commerce or navigation, but which operates alone within the limits and jurisdiction of New York upon a person at the time not even engaged in navigation, is still more clearly embraced within the general power of the States to regulate their own internal police, and to take care that no detriment come to the commonwealth.
>
> "We think it as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possible convicts, as it is to guard against the physical

pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease."

Legislation requiring registration and fingerprinting of aliens was enacted by Congress on June 28, 1940, as the Alien Registration Act, 8 U. S. C. sec. 1304-1306. In the dissenting opinion of Mr. Justice Stone, in *Hines v. Davidowitz*, 312 U. S. 52, at page 75, he stated:

> "The opinion of the Court does not deny, and I see no reason to doubt that the Pennsylvania registration statute, when passed, was a lawful exercise of the constitutional power of the state. With exceptions not now material it requires aliens resident in the state, who have not declared their intention to become citizens, to register annually, to pay a registration fee of $1.00, and to carry a registration identification card. It affords to the state a convenient method of ascertaining the number and whereabouts of aliens within the state, which it is entitled to know, and a means of their identification. It is an available aid in the enforcement of a number of statutes of the state applicable to aliens whose constitutional validity has not been questioned, one of which has been held by this Court not to infringe the Fourteenth Amendment. Patsone v. Pennsylvania, 232 U. S. 138, 58 L. Ed. 539, 34 S. Ct. 281.".

Legislation which was directed toward unmasking the Ku Klux Klan by requiring the identification of membership by certain organizations having an oath as a prerequisite or condition of membership, was upheld in *Bryant v. Zimmerman*, 278 U. S. 63. It was stated there:

> "The relator's contention under the due process clause is that the statute deprives him of liberty in that it prevents him from exercising his right of mem-

bership in the association. But his liberty in this regard, like most other personal rights, must yield to the rightful exertion of the police power. There can be no doubt that under that power the state may prescribe and apply to associations having an oath-bound membership any reasonable regulation calculated to confine their purposes and activities within limits which are consistent with the rights of others and the public welfare. The requirement in section 53 that each association shall file with the secretary of state a sworn copy of its constitution, oath of membership, etc., with a list of members and officers, is such a regulation. It proceeds on the twofold theory that the state within whose territory and under whose protection the association exists is entitled to be informed of its nature and purpose, of whom it is composed and by whom its activities are conducted; and that requiring this information to be supplied for the public files will operate as an effective deterrent from the violations of public and private right to which the association might be tempted if such a disclosure were not required. The requirement is not arbitrary or oppressive, but reasonable and likely to be of real effect. Of course, power to require the disclosure includes authority to prevent individual members of an association which has failed to comply from attending meetings or retaining membership with knowledge of its default. We conclude that the due process clause is not violated."

The disclosure provisions of the Federal Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. sections 261-270, were held to be valid and not to be unconstitutionally vague nor to violate the First Amendment rights of freedom of speech and press or freedom to petition the government in the case of *United States v. Harriss*, 347 U. S. 612.

In an earlier case, the registration provisions of Section 308 of that Act were held valid by a lower federal court in *United States v. Slaughter* (1950, D. C. Dist. Col.), 89 Fed. Supp. 205.

The registration provisions of the federal excise tax on the business of accepting wagers, Revenue Act of 1951, 26 U. S. C. (Supp. V) section 3285-3291, were held not to violate the privilege against self-incrimination as guaranteed by the Fifth Amendment in *United States v. Kahriger* (1952), 345 U. S. 22. This Court stated therein:

> "Nor do we find the registration requirements of the wagering tax offensive. All that is required is the filing of names, addresses, and places of business. This is quite general in tax returns. . . ."

It was further stated in connection with the assertion that the wager tax was unconstitutional because it is a denial of the privilege against self-incrimination:

> "Since appellee failed to register for the wagering tax, it is difficult to see how he can now claim the privilege even assuming that the disclosure of violations of law is called for. . . . If the form of return provided called for answers that the defendant was privileged from making, he could have raised the objection in the return, but could not on that account refuse to make any return at all."

The views expressed in the decision of the *Kahriger* case, *supra*, were reaffirmed in *Lewis v. United States*, 348 U. S. 419.

The Foreign Agent's Registration Act, 52 Stat. 631, as amended, 22 U. S. C. sections 611-21 (Supp. 1950), was upheld in the case of *United States v. Peace Infor-*

This Court has not yet decided whether a federal or state statute requiring registration of members of the Communist Party is valid under the Federal Constitution. In cases involving this question the judgments of the courts below were vacated on procedural grounds. *Albertson v. Millard* (1953), 345 U. S. 242, and *Communist Party v. Subversive Activities Control Board* (1951), 351 U. S. 115, were such cases. In the *Albertson* case the Michigan Communist Control Act, requiring the registration of Communists, was upheld by the District Court (106 Fed. Supp. 635).

The case of *People v. McCormick* (1951), 102 Cal. App. 2d Supp. 954, cited by appellant, held that where the danger of self-incrimination appears from the mere reading of the ordinance, it was unconstitutional. It must be pointed out that the ordinance there considered required only persons presently members of a Communist organization to register, and thus subjected themselves to prosecution for a felony under the Criminal Syndicalism Act of the State, which does not outlaw for a period of three years. The court in its decision stated that this ordinance was not "a simple police power regulation requiring identification of citizens."

In the ordinance before this Court the registration requirement of disclosing past offenses is for crimes already prosecuted are barred by such prior conviction.

In some jurisdictions the Constitution, in addition to specifying qualifications to vote, expressly authorizes the legislature to provide for the registration of voters. Under such authorization there can be no question as to the validity of the registration laws insofar as the power of the legislature to enact them is concerned, and where, pursuant to such a provision, the legislature enacts a law

providing for a reasonable, uniform, and impartial registration of voters, the electors must be registered in order to be entitled to vote. Likewise, by the great weight of authority, the power of the legislature to provide for the registration of voters, not only under, but in the absence of, express constitutional authority, is recognized. Such statutes are sustained upon the theory that they do not impair or abridge the elector's privilege, but merely regulate its exercise, and they are generally held to be impregnable against assaults upon various constitutional grounds.

Although some statutes relating to registration of voters have been condemned on various constitutional grounds, such enactments more frequently have been sustained as valid and reasonable regulations of the exercise of the elective franchise. They have been usually sustained as against the contention that they add to the constitutional qualifications of voters, are violative of due process of law, abridge the privileges and immunities of a citizen, or are violative of constitutional provisions that all elections shall be free and equal.

18 Am. Jur. pp. 231 and 232.

It is conceded that a sovereign government has power to compel its citizens or nationals to serve in its military forces when needed, and so-called "draft," "conscription," and "selective service" acts have been uniformly upheld as against various objections on constitutional grounds.

129 A. L. R. pp. 1171-1221.

A city ordinance requiring the registration and identification of persons who work as bootblacks, or sell magazines, pamphlets and newspapers in the streets, was up

held in *City of Manchester v. Leiby*, 117 F. 2d 661. (Cert. denied, 313 U. S. 562.) It was there held that such ordinance imposed no substantial burden upon the constitutional rights of freedom of the press or the free exercise of religion; that said ordinance was to enable the city to keep track of persons selling literature on the streets and was a reasonable police regulation.

An ordinance requiring taxi or bus drivers to register with the police was upheld in *Walton v. City of Atlanta*, 181 F. 2d 693. (Cert. denied, 340 U. S. 823.) The court stated, in holding this statute constitutional:

> "It is not for us to censor these ordinances or to pass upon the wisdom of every provision in them. Our duty is to decide and declare whether or not they deprive the appellants of any right, privilege or immunity, secured to them by the Constitution and laws of the United States, providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . . .
>
> "We cannot say that it would not be within the power of a state to require all inhabitants to have their fingerprints taken by the police; and, if so, we see no reason why all members of the class known as bus or taxi drivers should not be so required. . . . The assailed provisions are not void upon the face of the ordinances; . . ."

In *Norman v. City of Las Vegas*, 64 Nev. 38, 177 P. 2d 442, the ordinance of the City of Las Vegas required fingerprinting and photographing of persons seeking employment in establishments selling alcohol beverages at retail for consumption on the premises; required imprints to be forwarded to California and federal bureaus of identification with a request that previous records be for-

warded, and provided that such information received should be treated as confidential. It was there held that such ordinance was not unconstitutional as violating the privilege and immunities clause of the Federal Constitution or the Nevada constitutional guaranties of life, liberty and the pursuit of happiness. An interesting quotation from Blackstone's Commentaries (125-6) is found in the court's opinion which is most pertinent here. It is as follows:

> "The absolute rights of man, considered as a free agent, are denominated the natural liberty of mankind, which consists in a power of acting as one thinks fit, without any restraint or control unless by the law of nature; being a right inherent in us by birth, when God endowed man with free will. But every man, when he enters into society, gives up a part of his natural liberty as the price of so valuable a boon, and obliges himself to conform to those laws, which the community has thought proper to establish. Otherwise, there would be no security to individuals in any of the enjoyments of life."

The validity of the ordinance here in question was before the Appellate Department of the Superior Court of the County of Los Angeles, the court of last resort in such cases, in several instances. In an unreported original opinion in the case of *People v. Shirley*, CR. A. 1605, that court stated:

> "The purpose of the ordinance, of course, is to enable the law enforcement authorities to keep an eye on those residents whose past conduct has proven them to be seriously anti-social. All those who have been convicted of crimes punishable only as felonies come within the ordinance without further question as to the nature of their crimes. By provisions which

> we need not consider, a very few of the crimes classified as misdemeanors are deemed so anti-social that those convicted of them must report, under the ordinance; as a class, those convicted of misdemeanors are, with very few exceptions, exempt from its provisions. . . ."

This opinion was rendered ineffective upon the granting of a rehearing. Thereafter another unreported opinion was rendered which devoted itself to an interpretation of the words of the ordinance and held that the evidence was insufficient and did not answer the constitutional questions raised.

In the cases of *People v. Shannon,* CR. A. 2717, and *People v. Piscopo,* CR. A. 2720, the judgments of conviction were affirmed by said Appellate Department of the Superior Court without written opinion wherein it had been contended on appeal that the various sections of this ordinance were unconstitutional upon the same and similar grounds as those here made.

It is of interest to note that there has never been any constitutional question raised concerning the requirement that state-licensed professional persons register or file evidence of their state certificate in the county wherein they seek to practice their profession, such as Section 3071 of the Business and Professions Code which requires state-licensed optometrists to have their state certificate registered with the county clerk of the county in which his regular practice is maintained. Those practicing the medical profession are required to do the same under provisions of Section 2340 of the Business and Professions Code. Domestic and foreign corporations are required to file the articles of their incorporation in the county where their principal office is located and also in

each county wherein real property is owned. (Secs. 311; 312; 6402 Corporations Code.)

If the state or municipality is competent to require the registration of professional men in the place wherein they seek to practice even though determined to be qualified by higher authority, then there seems to be no good reason why a municipality may not require the registration of "professional criminals."

It is of interest to note that five states have enacted criminal registration statutes. They are Arizona, California, Illinois, New Jersey and Florida. Some forty-seven cities have enacted criminal registration ordinances. (University of Pennsylvania Law Review, Vol. 103, No. 1 (Oct. 1954) p. 65.) It would appear therefrom that the evil sought to be corrected and the protection of the public by such a regulation is not limited or novel to the City of Los Angeles.

C. The Ordinance Is a Reasonable Police Measure.

As a historical background and basis for legislation requiring the registration of "ex-convicts," it has been stated that in the early nineteen-thirties significant segments of the American public became alarmed at an apparently increasing rate of professional criminality. Legislative action to meet the new menace was said to be imperative. Federal investigating committees scoured the country for information which could form the basis for a national legislative solution. Such a committee was headed by Senator Copeland under Senate Resolution No. 74, Seventy-third Congress, 1st Session, 1933. In addition, state criminal laws were generally re-examined. In several instances penalties were increased, habitual and multiple offender laws were enacted and other new legis-

lation was passed to meet the criminal activity of that time. This activity formed the background in which the criminal registration ordinances had their inception.

In a recent article, Treatment of Recidivists, by Marcel Frym, in the Journal of Criminal Law, Criminology and Police Science, Vol. 47, No. 1, it was stated:

> "According to a report recently received from the Bureau of Criminal Statistics of the California State Department of Justice, only about 15.5 percent of the total of male admissions to California state prisons are without prior commitment, which leaves 84.5 percent of the men admitted with prior records. To be sure, this percentage of prior commitments includes misdemeanor and juvenile commitments. On the other hand, 35.7 percent of the admissions had had one or more prior prison records."

It would appear therefrom that the original cause for alarm is still a noteworthy consideration. The ordinance here involved is a reasonable police regulation thought by the City Council to be needed to afford protection to the residents of the community and needed as an aid to law enforcement agencies in providing a means of notice of the presence in the community of persons previously convicted so as to prevent, and more carefully scrutinize the action of those most likely to be the perpetrators of crime. It must be assumed that the legislative body had reason to believe there was a need for such legislation; that there was shown to said body some facts and figures which justified their belief that persons who had been previously convicted of felonies and certain types of misdemeanors were more likely to repeat in their activities and to cause harm to the inhabitants of the city, and that by requiring their registration, potential evil could be cor-

rected to some degree; that the requirement of such registration would deter and cause persons registered to try harder to stay within the law; that such legislation would enable law enforcement agencies to keep better track of those persons in the community more inclined to engage in criminal activities and would afford a better means of seeing that the various laws relating to persons previously convicted of felonies were enforced. It would also aid law enforcement in apprehending those who had committed a current crime by reason of their being registered as present in the community where the pattern of the current crime committed was known to have the same pattern, operation and method used in the past by such persons.

The requirement of disclosure of offenses for which the registrant had been convicted does not form a basis for any future additional punishment nor does it offend the self-incrimination clause. The registrant has already suffered punishment for the offenses shown and may not thereafter be tried therefor. The fact that in a future prosecution he may be punished as an habitual criminal does not arise from his disclosure but is based upon proof which is usually supplied by records from the state criminal courts, matters which are of public record.

Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Cantwell v. Connecticut, 310 U. S. 296.

It is the obligation of the government to protect life, liberty, and property against the conduct of the indifferent,

the careless, and the evil-minded. A recognition of this obligation is found in those exertions of the legislative power which have as an end the preservation of social order and the protection of the welfare of the public and of the individual. If such legislation be reasonably adapted to the end in view, affords a hearing before judgment, and is not forbidden by some other affirmative provision of constitutional law, it is not to be regarded as denying due process of law under the 14th Amendment.

City of Chicago v. Sturges, 222 U. S. 313.

Legislation for regulatory purposes, which dispenses with the condition of awareness of wrongdoing and places the burden of acting at his peril on a person otherwise innocent but standing in personal relation to a public danger, is a traditional means of regulation.

People v. Scott, 24 Cal. 2d 774.

The commission of various acts is made punishable under our criminal procedure, even though the doer be ignorant of the fact that the doing of the act constitutes an offense. A mistake of fact, or a want of intent, is not in every case a sufficient defense for the violation of a criminal statute. Statutes enacted for the protection of public morals, public health, and the public peace and safety, are apt illustrations of this rule.

People v. McClennegan, 195 Cal. 445, 469.

Appellant attempts to point out that this ordinance requires submission to police surveillance "for the rest of his natural life." It is submitted that appellant does not come within that class of persons so required, namely, those convicted of sex offenses (Sec. 52.38, subsecs. d and f) and therefore may not question such provision. One

charged with the commission of a crime under certain surrounding circumstances may not complain of the law because it might be unconstitutional as to others, or as to him under different surroundings. One attacking the constitutionality of a statute is not the champion of any rights except his own.

Henneford v. Silas Mason Co., 300 U. S. 577.

Under California law the court will not consider asserted unconstitutionality of portions of a statute which do not affect the rights of the party raising the question when such portions are separable.

People v. Lewis, 13 Cal. 2d 280.

V.

Appellant Was Given a Fair Trial and Review.

Although the basis for review of this matter was founded upon the repugnancy of the ordinance to the Constitution and the decision rendered in favor of its validity, appellant has mentioned matters relating to procedure and evidence in her attack on the validity of the ordinance.

As heretofore pointed out, at the trial, after introduction of certified copies of the judgments showing two convictions for felonies, appellant stipulated to all the material facts, namely: that she had resided in the City of Los Angeles and had been, and remained there for the period specified by the ordinance and the complaint, and in fact for a seven and one-half year uninterrupted period; that her prior convictions had not been set aside in a manner provided by law at the time of her arrest and that she had not registered with the police department prior to her arrest [R. 17]. Thus, each and every element of the offense charged was clearly shown.

Appellant's offer to testify that she did not know she had a duty to register at or before the time of her arrest was properly excluded for the reason that such evidence was immaterial to the issue.

When the statute plainly forbids an act, and the forbidden act is done by the accused, the law implies conclusively the guilty intent.

People v. McCalla, 63 Cal. App. 783; dismissed in 267 U. S. 585.

Everyone is presumed to know the law, and ignorance thereof is no defense to a charge of crime, though such ignorance must be of law and not of fact.

People v. Flanagan, 65 Cal. App. 268.

So far as pertinent to appellant's argument, Section 20 of the Penal Code of California provides that "in every crime or public offense there must exist a union, or joint operation of act and intent. . . ." This does not mean that a positive, wilful intent to violate the law is an essential ingredient of every offense. Sometimes an act is expressly prohibited by statute, in which case the intentional doing of the act, regardless of good motive or ignorance of its criminal character, constitutes the offense denounced by law. Instances illustrating this principle may be found in statutes enacted for the protection of public morals, public health, and the public peace and safety. If a specific intent is not made an incredient of the statutory offense, it is not necessary to prove such specific intent in order to justify a conviction.

People v. Gory, 28 Cal. 2d 450, 453.

Appellant did testify she had no knowledge that the crime of which she was convicted was punishable as a

felony, etc. [R. 17-18]. This, of course, was before the jury for their consideration and upon which her credibility as a witness depended.

Appellant refers to the case of *People v. Cahan*, 44 Cal. 2d 434, and its holding as to the admissibility of evidence illegally obtained but overlooks the fact that in the present case no evidence was introduced which had been illegally obtained. All of the evidence upon which her conviction was founded was primarily based upon stipulations made by her counsel [R. 17]. Her effort to interject issues of illegal arrest, brutality and violation of civil rights appear only after the trial had been completed and the verdict of the jury returned. These assertions were orally made in connection with a motion in arrest of judgment and by way of an offer of proof [R. 19]. Her offer of proof and motion were properly denied for under California law such a motion is directed only to the sufficiency of the accusatory pleading or jurisdiction of the trial court.

Penal Code, Sec. 1185; (Appendix C)

People v. Odom, 19 Cal. App. 2d 641.

Appellant, in her discussion under the heading "Equal Protection," makes reference to the matter of filing of amended complaints. In answer thereto, appellee cites as authority for such procedure Section 1009 of the Penal Code, set forth in full in Appendix D. There was no contention ever made that the amended complaints in any manner resulted in a change of the original charge or caused appellant to suffer any prejudice to her substantial rights.

It was stated by this Court in *Chaplinsky v. State of New Hampshire*, 315 U. S. 568, that the refusal of the

state court to admit evidence of provocation and evidence bearing on the truth or falsity of the utterances alleged to have been made is open to no constitutional objection; that whether the facts sought to be proved by such evidence constitute a defense to the charge or may be shown in mitigation, are questions for the state court to determine and that this court's function is fulfilled by a determination that the challenged statute, on its face, and as applied does not contravene the Fourteenth Amendment.

The appellant was accorded a fair trial and review.

VI.
Conclusion.

Appellee submits that the ordinance here questioned is a valid, reasonable police regulation enacted to protect the public morals, health, peace, safety and welfare, and does not offend any of the constitutional rights of persons included within its provisions.

The orders and judgment of the Appellate Department of the Superior Court of the County of Los Angeles should be affirmed.

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APPENDIX A.

Municipal Code of the City of Los Angeles, Secs. 52.38, 52.39, 52.40, 52.41, 52.42.

Section 52.38. *Convicted Person Defined:*

For the purpose of Sections 52.38 to 52.43, inclusive, the words "convicted person" are defined as follows:

(a) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony.

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code.

2. Regulating or prohibiting the carrying, possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge or flash of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) (Repealed by Ord. No. 106,989, Eff. 3/24/56.)

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California, under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264, 265, 286, 288, 288a, 647a or of Subdivisions 1 or 2 of Section 311 of said Code, or who has been since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this state, would have been punishable under one or more of said sections.

1. Any person who has been since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647 (5) of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or elsewhere, of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who

has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.38 to Section 52.43, inclusive.

Section 52.39. *Convicts Registration—Information Required:*

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five day, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(b) Any convicted person who does not reside in the City, but who has a temporary or permanent place of abode outside the City and comes into the City on five occasions or more during any thirty-day period, shall be subject to the provisions of Sections 52.38 to 52.43, inclusive, and shall, on or before entering the City on such fifth occasion, register in the manner prescribed in Subdivision (d) hereof.

(c) Provided, that any person who has once registered with the Chief of Police as a convicted person, shall not be required to register again, except as provided in Section 52.40 of this Code; provided further, however, that any person convicted of any of the crimes enumerated in Subdivision (d) of Section 52.38 of this Code shall register as provided in this section, regardless of whether he has previously so registered as a convicted person by reason of his conviction of some crime other than those enumerated in said Section 52.38 (d).

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i. e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

Section 52.40. *Convicts—Change of Residence:*

Any convicted person, except a non-resident, who is required to register under the provisions of Sections 52.38 to 52.43, inclusive, who changes his place of residence, stopping place or living quarters, shall, within 48 hours after such change, and any non-resident mentioned in Section 52.39 (b) who has registered and changes his place of residence, stopping place or living quarters, shall, upon his next entry into the City after such change, notify the Chief of Police of such fact and furnish to such Chief of Police the address of his new residence, stopping place or living quarters in the same manner and with the same detailed information as is required in the filing of the original statement under the provisions of Section 52.39.

Section 52.41. *Convicts, Photographing and Fingerprinting:*

Each convicted person, at the time of registering and furnishing the information required by Sections 52.39 and 52.40, shall be photographed and fingerprinted by the Chief of Police, who shall cause such photographs and fingerprints to be made a part of the record provided for by Sections 52.41 and 52.43.

Section 52.42. *Records Confidential:*

(a) The statements, photographs and fingerprints hereinbefore provided for shall not be open to inspection by the public, or by any person other than a regularly em-

ployed peace or law enforcement officer. Any such photograph, or duplicates thereof, may be exhibited to persons other than police officers of the City for the purpose of assisting in identifying perpetrators of any crime. Copies of said statements, photographs and fingerprints may be transmitted to the sheriff of any county of the State of California, to the head of any organized police department of any municipality in said state, or to the head of any department of the State of California engaged in the enforcement of any criminal law of this state, or to the head of any federal law-enforcement agency, or to any sheriff or chief of police of a municipality, or to the head of any other law-enforcement agency of any state in any state or territory outside the State of California, when request is made in writing by such sheriff or other head of a law-enforcement agency asking for the record of a certain person named therein, or for the record of a person whose photograph or fingerprints reasonably correspond with photographs or fingerprints submitted with such request, and stating that such record is deemed necessary for the use of such law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose.

(b) Any police officer or other employee of the Police Department who discloses to any person any information contained in any statement required to be filed under the provisions of Sections 52.38 to 52.43, inclusive, otherwise than in the regular course of his duties, shall be guilty of a misdemeanor.

(c) Nothing contained in Sections 52.38 to 52.43, inclusive, shall prevent the Chief of Police from furnishing to the sheriff of any county, the Chief of Police of any municipality, or the head of any other law-enforcing agency which maintains any system of registration of convicted persons copies of the statements required to be filed under the provisions of Sections 52.38 to 52.43, inclusive, together with photographs and fingerprints of persons making such statements when and if such sheriff, chief of police, or other head of a law-enforcing agency furnishes to the Chief of Police of this City copies of statements, photographs and fingerprints procured by him, and it is hereby made the duty of such Chief of Police to arrange for the exchange of such information.

(d) Any police officer or other employee of the Police Department may, any other provisions herein notwithstanding, furnish to persons other than peace officers, photographs, fingerprints, descriptions and other data relative to persons registered as convicted persons, as defined by Sec. 52.38 (d)-1 of this Code, for the purpose of furnishing the information required by Sec. 41.11.2 of this Code, or for the purpose of securing and effecting the enforcement of said section; and the furnishing of such information, pictures or fingerprints shall be within the regular course of his duties.

APPENDIX B.

Constitution of California, Article XX, Section 10:

"Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment."

Article XX, Section 11:

"Laws shall be made to exclude from office serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice."

Article IV, Section 21:

"No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony."

Section 1021, Government Code:

"A person is disqualified from holding any office upon conviction of designated crimes as specified in the Constitution and laws of the State."

Section 1028, Government Code:

"Any person who has been convicted of a felony in this State or any other state, or who has been convicted of any offense in any other state which would

have been a felony if committed in this State, is disqualified from holding office or being employed as a peace officer of the State, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the State, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer.

"Nothing in this section shall be construed to limit or curtail the power or authority of any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood, fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon assistance in making arrests or preventing the commission of any criminal offense."

Section 1405, Government Code:

". . . No person shall be appointed a special policeman under this article unless he is a citizen of the United States, of good moral character, and had not been convicted of a felony."

Section 298 Elections Code:

"The county clerk shall also, in the first week of September in each year, examine the records of the courts having jurisdiction in case of infamous crimes and the embezzlement or misappropriation of public money, and shall cancel upon the register the names of all voters appearing thereon who have been finally convicted of an infamous crime or of the embezzlement or misappropriation of public money.

"In counties having a registrar of voters the county clerk of that county shall furnish a copy of such record under the seal of his office to the registrar of voters who shall cancel upon the register the names of all persons appearing in such record.

"As used in this section, 'county clerk' does not include 'registrar of voters'."

Section 209, Elections Code:

"The county clerk shall furnish to the registrar of voters in counties where there is a registrar of voters before the first day of September of each year, a statement showing the names of all persons appearing from the records of courts within his county having jurisdiction thereof, to have been convicted of an infamous crime, or of the embezzlement or misappropriation of public money, during the year prior to the first day of September, and which conviction has become final. The registrar of voters shall thereupon during the first week of September in each year, cancel the affidavits of registration of such persons. The county clerk shall certify the statement under the seal of his office.

"As used in this section 'county clerk' does not include 'registrar of voters'."

Section 92, Civil Code:

"*Divorce, causes.*

"Divorce may be granted for any of the following causes:

One. Adultery.

Two. Extreme cruelty.

Three. Wilful desertion.

Four. Wilful neglect.

Five. Habitual intemperance.

Six. Conviction of a felony.

Seven. Incurable insanity."

Section 199, Code of Civil Procedure:

"a. Trial juror.

A person is not competent to act as a trial juror:

1. Who does not possess the qualifications prescribed by the preceding section;

2. Who has been convicted of malfeasance in office or any felony or other high crimes; or

. . . ."

Section 2051, Code of Civil Procedure:

"A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he had been convicted of a felony unless he has previously received a full and unconditional pardon, based upon a certificate of rehabilitation."

Section 98, Penal Code:

"*Officers to Forfeit and Be Disqualified From Holding Office.*

Every officer convicted of any crime defined in this Chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this State."

(Offenses in this Chapter (1)—Bribery and Corruption.)

Section 1072, Penal Code:

"*General Causes of Challenge.*

General causes of challenge are:

1. A conviction for felony;

. . . .

. . . ."

Section 12021, Penal Code:

"Any person who is not a citizen of the United States and any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or who is addicted to the use of any narcotic drug, who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, and shall be punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year or by a fine not exceeding five hundred dollars ($500) or by both."

APPENDIX C.

Section 1185, Penal Code:

Motion; definition; defects authorizing motion; time; entry of order

"A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea, finding, or verdict of guilty, or on a finding or verdict against the defendant, on a plea of a former conviction, former acquittal or once in jeopardy. It may be founded on any of the defects in the accusatory pleading mentioned in Section 1004, unless the objection has been waived by a failure to demur, and must be made and determined before the judgment is pronounced. When determined, the order must be immediately entered in the minutes."

APPENDIX D.

Section 1009, Penal Code:

Amendment of accusatory pleading before plea or sustaining of demurrer; subsequent amendments; resubmission or new information; pleadings to amendment; amendments not permitted; verification

"An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney in any inferior court, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if he has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot

be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint."